

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH MICHAEL GREY,	:	CIVIL ACTION
Plaintiff	:	
vs.	:	
CITY OF PHILADELPHIA,	:	
Defendant	:	
and	:	
PHILADELPHIA POLICE DEPT.,	:	
Defendant	:	
and	:	
ROLAND LUCIER, BADGE #3679,	:	
Defendant	:	
and	:	
THOMAS WHALEN, BADGE #4300,	:	
Defendant	:	
and	:	
PERRY PRESSMAN, BADGE #9358,	:	
Defendant	:	NO. 77-2641

AMENDED COMPLAINT

Jury Trial Demanded

Plaintiff claims of Defendants, and each
of them the sum of One Million Dollars (\$1,000,000.)
in damages upon the following causes of action:

1. Plaintiff is a citizen and resident of the

Commonwealth of Pennsylvania.

2. Defendant, CITY OF PHILADELPHIA, is a municipality incorporated by the Commonwealth of Pennsylvania and maintains in the course of its authority a police department.

3. Defendant, PHILADELPHIA POLICE DEPARTMENT, is a duly authorized department of the City of Philadelphia responsible for the peace and safety of its citizens.

4. Defendant, ROLAND LUCIER, BADGE #3679, at all times mentioned hereinafter was a member of the City of Philadelphia Police Department assigned to the 26th District Police Station.

5. Defendant, THOMAS WHALEN, BADGE #4300, at all times mentioned hereinafter was a member of the City of Philadelphia Police Department assigned to the 26th District Police Station.

6. Defendant, PERRY PRESSMAN, BADGE #9358, at all times mentioned hereinafter was a member of the City of Philadelphia Police Depart-

ment assigned to the 26th District Police Station.

7. Jurisdiction is conferred upon this Court by virtue of Articles IV and XIV of the Bill of Rights of the United States Constitution and Title 28, Sections 1331 and 1343 of the United States Code, and that the amount in controversy is in excess of Ten Thousand Dollars (\$10,000.00).

8. On April 23, 1977 at about 12:30 A.M., plaintiff was lawfully standing on the street where he usually parks his motor vehicle in close proximity to his house at 2447 East Letterly Street, Philadelphia, Pennsylvania, when two policemen, defendants, ROLAND LUCIER, BADGE #3679 (hereafter called Lucier) and THOMAS WHALEN, BADGE #4300 (hereafter called Whalen), drove their police car #264 close to where plaintiff was standing. Defendants, Lucier and Whalen, got out of their car and approached plaintiff in a menacing and portentous manner causing plaintiff fear and apprehension. When plaintiff asked what defendants, Lucier and

Whalen, wanted, they responded with vulgar words and demanded that plaintiff show his identification. Plaintiff thereupon showed his registration to his motor vehicle to defendant, Lucier, and stated that he didn't like defendant's attitude, whereupon defendant, Whalen, threatened plaintiff with a verbal threat of taking plaintiff around the corner and beating his skull with his night stick. The said verbal threat by defendant, Whalen, caused plaintiff nervous upset and fear of imminent serious bodily injury. Plaintiff was then grabbed by the arms and physically restrained from free movement by defendants, Lucier and Whalen, against plaintiff's will. Plaintiff made no effort to escape or resist during the entire fracas. Defendant, Lucier, told plaintiff, "You're under arrest," whereupon plaintiff asked what crime he was being charged with, but defendant, Lucier, answered, "We'll tell you when we get you to the Station." Plaintiff then asked to make a phone call, but his request was denied.

Defendant, Whalen, then bent plaintiff's arm back causing severe pain to plaintiff for several days thereafter. Defendant, PERRY PRESSMAN, BADGE #9358 (hereafter called Pressman), drove up to where plaintiff and defendants, Lucier and Whalen, were standing, in an enclosed police van. All three defendants, Lucier, Whalen, and Pressman, assisted each other in a frisk and search of plaintiff's papers and valuables by physically removing same from plaintiff's pockets. Plaintiff was then taken to the 26th District Police Station in the said police van driven by defendant, Pressman. At all times within the said Police Station, plaintiff's free movement was restricted by the defendants. Plaintiff continually requested to make a phone call and be told what criminal charges were being placed against him, but defendants refused to allow him to make a phone call or tell him what criminal charges were being placed against him. Plaintiff was told by defendant, Lucier, that he would be

put in a cell over night and be charged in the morning. Plaintiff was permitted to speak with Corporal Vanore of the 26th District Police Station after plaintiff insisted on speaking to someone in authority in said Police Station. When plaintiff informed the said Corporal of the aforementioned details, the Corporal had him released from custody; plaintiff was then told he had to walk home from said Police Station (public transportation was not operating at the time due to a strike). Plaintiff's false imprisonment lasted for slightly more than two hours; he was released from said Police Station at about 2:45 A.M. on the morning of April 23, 1977.

9. The aforementioned statements constitute a cause of action by the plaintiff, for which the plaintiff seeks damages; defendants' tortious action against plaintiff included false imprisonment and assault and battery arising from this single cause of action. Plaintiff has and probably will continue

in the future to suffer nervous upset and shock and mental anguish due to the aforesaid actions of defendants. Plaintiff has suffered physical pain and discomfort as a result of the aforesaid actions of defendants for which plaintiff seeks damages due to lost income from not being able to attend to his duties as an independent public accountant for about two weeks after the date of the said incident.

10. Plaintiff subsequently obtained an "Extract of Police Report of Incident or Offense" (hereafter called Extract); said Extract has been in the past, is now, and probably will continue to be in the future available for inspection by the public and government agencies. The said Extract is herewith attached, and the statements made therein concerning plaintiff being "paranoid" and having "a persecution problem" are altogether false and have no basis in fact. Plaintiff has no history of mental illness. The said statements in the attached Extract are damaging to the plaintiff's good name and rep-

utation in the community and holds plaintiff up to ridicule and contempt. Defendants' tortious action against plaintiff is libel, arising from the single cause of action as stated in paragraph 8 of this Complaint and inseparably connected to it, for which plaintiff seeks damages.

Wherefore, plaintiff prays this honorable court to award compensatory damages in the amount of Five Hundred Thousand Dollars (\$500,000.00), as well as punitive damages in the amount of Five Hundred Thousand Dollars (\$500,000.00), with interest and costs.

/s/ Joseph Michael Gray

Plaintiff Pro Se

Note: This Amended Complaint was filed on September 15, 1977, and Judge Becker granted the Amended Complaint on April 3, 1978.

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH MICHAEL GREY : CIVIL ACTION

v. :

CITY OF PHILADELPHIA, :
PHILADELPHIA POLICE DEPT., :
ROLAND LUCIER, :
THOMAS WHALEN, and :
PERRY PRESSMAN : NO. 77-2641

ORDER

AND NOW, to wit, this 3rd day of April, 1978,
upon consideration of the Motion to Amend the
Complaint by Plaintiff, Joseph Michael Grey, and
the Memorandum of Law in support thereof, the
Motion is granted and it is

ORDERED that the Complaint against Defend-
ants, City of Philadelphia, Philadelphia Police Dept.,
Roland Lucier, Thomas Whalen and Perry Pressman,
be hereby amended.

/s/ Edward R. Becker

Judge

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH MICHAEL GREY :
v. :
CITY OF PHILADELPHIA, et al : NO. 77-2641

ORDER

BEFORE E.R. BECKER

AND NOW, this 3rd day of April, 1978, it is ORDERED that Defendants' motion to dismiss, except as to the "Phila. Police Dept." is denied. The motion is granted as to the "Phila. Police Dept." which is dismissed as a party. Jurisdiction will be retained over the pendent claims.

BY THE COURT:

/s/ Edward R. Becker

Judge

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v. :

CITY OF PHILADELPHIA, et al. : NO. 77-2641

ORDER

AND NOW, this 4th day of August 1981, after hearing, and for the reasons set forth in the bench opinion delivered this day, it is ORDERED that defendants' motion for summary judgment is hereby GRANTED, and plaintiff's complaint is DISMISSED.

FILED: August 5, 1981

ENTERED: August 5, 1981

Signed BY THE COURT: EDWARD R. BECKER,
Judge.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 81-2543

JOSEPH MICHAEL GREY,
Appellant

v.

CITY OF PHILADELPHIA, PHILADELPHIA
POLICE DEPARTMENT, ROLAND LUCIER,
BADGE #3679, THOMAS WHALEN, BADGE #4300,
PERRY PRESSMAN, BADGE #9358
(Civil No. 77-2641 - E.D.Pa.)

Submitted: September 13, 1982

Filed: September 14, 1982

BEFORE: SEITZ, Chief Judge, ROSENN and GARTH,
Circuit Judges.

JUDGMENT ORDER

After consideration of the contentions raised by
appellant, it is

ADJUDGED AND ORDERED that the judgment
of the district court be and is hereby affirmed.

Costs taxed against appellant.

A-13

By the Court,

/s/ Seitz

Chief Judge

ATTEST:

/s/ Sally Mrvos

Clerk of the Court

DATED: SEP 14 1982

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 81-2543

JOSEPH MICHAEL GREY,

Appellant

v.

CITY OF PHILADELPHIA, PHILADELPHIA
POLICE DEPARTMENT, ROLAND LUCIER,
BADGE #3679, THOMAS WHALEN, BADGE #4300,
PERRY PRESSMAN, BADGE #9358

(Civil No. 77-2641 - E.D.Pa.)

SUR PETITION FOR REHEARING

Present: SEITZ, Chief Judge, ALDISERT, ADAMS,
GIBBONS, ROSENN, HUNTER, WEIS, GARTH, HIG-
GINBOTHAM, SLOVITER, and BECKER, Circuit Judge-

es

Submitted: September 28, 1982

Entered: October 15, 1982

The petition for rehearing filed by Appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

/s/ SEITZ

Chief Judge

Dated: October 15, 1982

U.S. Constitution: Fourth Amendment.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Constitution: Fourteenth Amendment.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1331.

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States.

28 U.S.C. § 1343 (a) (3).

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person. . . .

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right privilege or immunity secured by the Constitution of the

United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States. . .

Federal Rules of Civil Procedure: Rule 12 (b) (6).

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted, . .